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Lindsay 52

7328

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08/05/2004

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EXAMINER

KIM, CHRISTOPHER S

ART UNIT

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/848,665
Filing Date: May 03, 2001
Appellant(s): PAROD ET AL.

MAILED
AUG - 5 2004
GROUP 3700

Joel H. Bock
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 24, 2004.

(1) *Real Party in Interest*

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A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 33, 36, 38-45 and 50.

Claims 34, 35, 46 and 47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-26, 37, 48 and 49 are withdrawn from consideration as not directed to the elected invention and species.

Claims 27-32 have been canceled.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

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Appellant's brief presents arguments relating to claims 37, 48 and 49 as depending from generic claims 33 and 45. This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

Appellant's brief present arguments relating to non-rejected claims 34 and 46. Theses claims have been objected to as depending on a rejected claim but would be allowable if presented in independent form.

(7) Grouping of Claims

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because it includes claims that have been withdrawn (claims 37, 48 and 49) and claims that have not been rejected (objected to claims 34, 35, 46, 47).

(8) Claims Appealed

Claim 46 contain(s) substantial errors as presented in the Appendix to the brief. Accordingly, claim 46 is correctly written in the Appendix to the Examiner's Answer.

(9) Prior Art of Record

632,795	Stoddart	9-1899
4,676,438	Sesser	6-1987

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:
Claims 33, 36, 38, 39, 40-45, 50 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sesser (4,676,438) in view of Stoddart (632,795).

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With respect to claim 33, 36, 42, 44 and 45, Sesser discloses an irrigation assembly comprising: a main pipeline 14; mobile towers 18; a plurality of drop tube assemblies 22; a plurality of stationary troughs (as shown in the bottom left corner of figure 1). Sesser discloses the limitations of the claimed invention with the exception of the trough having a plurality of underground drains and a weir. Stoddart discloses a trough a having a plurality of underground drains b and a weir (one or both ends of the distributor are closed (lines 19-20). It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided a trough to the device of Sesser as taught by Stoddart to distribute liquids in fine streams or drops (Stoddart, lines 9-12).

With respect to claims 38, 39, 40, 41 and 43, Sesser in view of Stoddart discloses the limitations of the claimed invention with the exception of the trough being a pipe with a slot located in the top. Stoddart discloses a V-shaped trough having a slot located in the top. Providing a pipe (a circular or rounded shape) instead of a V-shape is a mere change in shape. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided a pipe (a pipe shaped trough) in the device of Sesser in view of Stoddart to decrease sharp edges. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

(11) Response to Argument

Appellant argues that Sesser does not disclose a trough. Appellant argues that Sesser discloses furrows which are part of the ground. The examiner contends that Sesser does in fact disclose a "trough". Sesser shows, in figure 1, troughs between the

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rows of plants. Sesser explicitly shows no troughs in figures 2 and 3. Sesser refers to these "troughs" as furrows. A furrow is defined as:

furrow (fûr'ô, fûr'ô) noun

1. A long, narrow, shallow trench made in the ground by a plow.
2. A rut, groove, or **narrow depression**: snow drifting in furrows.
3. A deep wrinkle in the skin, as on the forehead.

(bolding added). The American Heritage® Dictionary of the English Language, Third Edition copyright © 1992 by Houghton Mifflin Company. A "trough" is defined as:

trough (trôf, trôf) noun

1. a. A long, narrow, generally shallow receptacle for holding water or feed for animals. b. Any of various similar containers for domestic or industrial use, such as kneading or washing.
2. A gutter under the eaves of a roof.
3. A long, **narrow depression**, as between waves or ridges.
4. A low point in a business cycle or on a statistical graph.
5. Meteorology. An elongated region of relatively low atmospheric pressure, often associated with a front.
6. Physics. A minimum point in a wave or an alternating signal.

(bolding added). The American Heritage® Dictionary of the English Language, Third Edition copyright © 1992 by Houghton Mifflin Company. One of the common definitions for "furrow" and "trough" is a "narrow depression". Therefore, the furrow of Sesser can be considered a trough. Next, appellant argues that the furrow is part of the ground and cannot be "troughs positioned at least partially above the surface of the ground." The ground of Sesser is the surface on which the wheel of the mobile boom rolls over. See figure 1. The furrows or troughs are at least partially above that surface. Appellant's

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claims do NOT prohibit the trough being made of the same material as the ground. If a clay trough was placed over earth of clay, does that mean that there is no trough since the ground and the trough are both clay? Such reasoning and conclusion would be illogical. Sesser discloses troughs at least partially above the ground rather than ditches below the surface of the ground. The examiner's position is that the only possible limitation of claim 33 that Sesser may not meet is "each trough defining a fluid passageway therethrough which permits water to flow from the trough into the ground." Sesser's furrows/trough has pores through which water flows into the ground. Therefore, it may be argued that Sesser does have a passageway. But in light of appellant's specification, "passageway" has been considered to be an "opening" rather than pores of the material, and Sesser has been considered not to disclose a passageway. See appellant's specification, page 18, lines 2-3. The passageway is taught by Stoddart.

Appellant argues that there is no motivation to combine the teachings of Stoddard with the teachings of Sesser. Sesser discloses, in column 1, lines 45-56, the objectives of his invention: "enables the water to be distributed at the same gallonage per minute almost directly at ground level so as to be almost totally captured and applied to the portion of the field where it can be more efficiently and effectively used. The water being applied directly into the furrow keeps it off plants at critical times and protects salt sensitive crops from possible salt burn. Also, by controlling the area of watered soil, wheel tracks remain dry and weed growth is discouraged." Sesser's desire is to keep the water off the plants and wheel tracks by providing water into the

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furrows where water can seep into the ground to water the plants. Stoddart teaches, in lines 9-12, "The object of this invention is to distribute liquids in fine streams or drops, and is especially applicable for delivering liquids onto filter-beds." Stoddart teaches to distribute fine streams or drops in localized fashion (drops from pegs) onto filter-beds. One of ordinary skill in the art would recognize another advantage. One would recognize that movement of the water will eventually degrade Sesser's furrows. Stoddart's troughs, which are made of wood or metal, will not be degraded by the liquid.

Appellant argues that the trough of Stoddard does not provide flow through its structure. Stoddard discloses, in lines 22-23, "liquid... flows... through the notches... and drops from the pegs into the receiving vessel". Since the fluid flows through the notches, it must inherently flow through the device and through the notches (which constitute passageways). Claim 33 calls for "a plurality of stationary troughs positioned at least partially above the ground... each trough having at least one wall which is adapted to engage a surface of the ground, and each trough defining a fluid passageway therethrough which permits water to flow from the trough into the ground." The claim requires that the troughs be at least partially above the ground. Sesser teaches the troughs being partially above the ground (see figure 1). Stoddart teaches the troughs being partially above the ground (lines 23-24, "and drops from the pegs into the receiving vessel") The claim requires that the trough to have at least one wall adapted to engage a surface of the ground. The recitation "adapted to engage a surface of the ground" merely requires the ability to engage the surface of the ground. Stoddart shows a triangular trough a having at least one wall adapted to engage a

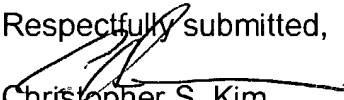
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surface of the ground. Next, the claim requires each trough to define a fluid passageway therethrough which permits water to flow from the trough into the ground. Stoddard discloses fluid flowing into the trough, overflowing through the notches and down the exterior of the pegs.

Appellant argues that Stoddard does not disclose weir mounted in the pipe. Stoddard discloses weir mounted in the pipe. Stoddard discloses that one or both ends of the distributor are closed (lines 19-20). The closing end wall is **within** the triangular shaped trough.




For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Christopher S. Kim
Primary Examiner
Art Unit 3752


August 2, 2004

Conferees

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Appendix

Claim 46. The irrigation assembly of claim 45 wherein each water receiving receptacle further includes at least one underground drain ~~a plurality of underground drains which~~ ~~is~~ ~~are~~ adapted for penetrating the ground ~~and which is~~ ~~are~~ in fluid communication with ~~the passageway,~~ the ~~each~~ drain defining at least one opening, which opening of the drain defines at least a portion of one fluid passageway through the water receiving receptacle ~~therethrough~~ for permitting water flow through the water receiving receptacle.